

APPEAL BRIEF
Docket No.: 278542008700
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Miyuki OKAMOTO et al.

Application No.: 10/581,319

Filed: November 29, 2004 (Int'l)

For: MOBILE TELEPHONE DEVICE

Examiner: M. Lee

Art Unit: 2622

Confirmation No. 3852

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Madam:

This brief is in furtherance of the Notice of Appeal, filed in this case on June 3, 2009. The fees required under § 41.20(b)(2) and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205:

- | | |
|-------|---|
| I. | Real Party in Interest |
| II. | Related Appeals and Interferences |
| III. | Status of Claims |
| IV. | Status of Amendments |
| V. | Summary of Claimed Subject Matter |
| VI. | Grounds of Rejection to be Reviewed on Appeal |
| VII. | Arguments |
| VIII. | Claims Appendix |
| IX. | Evidence Appendix |
| X. | Related Proceedings Appendix |

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is Kyocera Corporation.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-6 remain pending and stand finally rejected. The rejections of all pending claims 1-6 are being appealed. Claims 1 and 4 are independent claims and should be considered separately.

IV. STATUS OF AMENDMENTS

No claims have been amended during prosecution of the present application. There are no outstanding claim amendments filed subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a mobile telephone device provided with a television broadcast-viewing function. (See, e.g., paragraph [0021], lines 1-3; FIG. 1, Mobile Telephone Device 30; FIG 2, Mobile Telephone Device 30). According to various embodiments, the mobile phone device includes a memory for storing setting information on an image in a television broadcast viewing mode and setting information on an image in a telephone mode. (See, e.g., paragraph [0005] lines 4-7; paragraph [0029] lines 1-15; paragraph [0030] lines 1-6; and FIG. 2, Memory 9). The mobile telephone device may further include a controller for reading out, in the television broadcast viewing mode, the setting information on the image in the television broadcast viewing mode from the memory so that a setting of a display device is made, and for reading out, in the telephone mode, the setting information on the image in the telephone mode from the memory so that a setting of the display device is made. (See, e.g., paragraph [0005] lines 6-13; paragraph [0035] lines 5-9; FIG. 1, Cross Key 82; and FIG. 2, Application Processor 5 and Display Device 6).

Independent claim 4 is directed to a mobile telephone device provided with a television broadcast-viewing function. (See, e.g., paragraph [0021], lines 1-3; FIG. 1, Mobile Telephone Device 30; FIG 2, Mobile Telephone Device 30). The mobile phone device may include a memory for storing setting information on a sound in a television broadcast viewing mode and setting information on a sound in a telephone mode. (See, e.g., paragraph [0005] lines 4-7; paragraph [0029] lines 1-15; paragraph [0030] lines 1-6; and FIG. 2 Memory 9). The mobile telephone device may also include a controller for reading out, in the television broadcast viewing mode, the setting information on the sound in the television broadcast viewing mode from the memory so that a setting of a sound output portion is made, and for reading out, in the telephone mode, the setting information on the sound in the telephone mode from the memory so that a setting of the sound output portion is made. (See, e.g., paragraph [0008] lines 6-13; paragraph [0034] lines 6-9; FIG. 1, Cross Key 82; and FIG. 2, Application Processor 5 and Speaker Unit 7)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Applicants respectfully appeal the rejections of claims 1-2, and request that the Board reconsider whether claims 1-2 are patentable under 35 U.S.C. § 102(e) over Bae et al. (200410055011A1) (hereinafter “Bae”).

Applicants respectfully appeal the rejections of claim 3, and request that the Board reconsider whether claim 3 is patentable under 35 U.S.C. § 103(a) over Bae in view of Ogoro, U.S. Patent No. 6,637,600.

Applicants respectfully appeal the rejections of claims 4-6, and request that the Board reconsider whether claims 4-6 are patentable under 35 U.S.C. § 103(a) over Bae in view of Finke-Anlauff, U.S. Patent No. 5,479,476.

VII. ARGUMENT

Claims 1-6 stand rejected under either 35 U.S.C. §102(e) or §103(a). Reconsideration and reversal of all the rejections are respectfully requested.

A. Rejection of Claims 1-2 Under 35 U.S.C. § 102(e)

Claims 1-2 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bae. Applicants respectfully assert that the Examiner erred in applying the teachings of Bae in rejecting claims 1-2, and reconsideration and reversal are requested.

Independent claim 1 recites, “a controller for reading out, in the television broadcast viewing mode, the setting information on the image in the television broadcast viewing mode from the memory so that a setting of a display device is made, and for reading out, in the telephone mode, the setting information on the image in the telephone mode from the memory so that a setting of the display device is made.”

For example, as provided in at least paragraphs [0025] and [0027] of the present specification, “[w]hen the display device 6 and the speaker unit 7 are initialized, the baseband chip 3 performs the **settings of the driver of the display device 6 and the speaker unit 7** based on the related information, which is read out from memory 9, on the image/sound in **the telephone mode**. The driver performs a setting for **brightness (supplied power) of the backlight based on the screen luminance information**, etc., for example, and the speaker unit 7 performs an **amplification factor** setting. [T]he baseband chip 3 reads out from the memory 9 the related information on the image/sound **in the television-viewing mode** and applies the related information to the application processor 5. The application processor 5 writes the related information into the memory 10 (DRAM), and **performs the settings for the driver of the display device 6 and the speaker unit 7** based on the related information. The above driver performs the setting for **brightness (supplied power) of the backlight, for example, based on the screen luminance information**, which is the related information, and the speaker unit 7 performs the **amplification factor setting**.” (emphasis added) Thus, embodiments of the present invention are capable of

creating different driver settings for each mode, television and telephone, to set the operating parameters of the display device and speaker unit.

Bae explicitly discloses in paragraphs [0049]-[0050] with emphasis added:

“A memory controller 123 functions to control access to the memories 131, 133, and 135 under the control of the control unit 10. The memory controller 123 controls the memories 131, 133 and 135 separately according to the television mode and the OSD mode [on screen display (OSD) such as text message etc.] of the device.

In the television mode, the memory controller 123 stores user data from the control unit 10 in the first memory 131. The memory controller 123 also stores video data of the current frame from the scaler 113 in the second memory 133 (or the third memory 135) and outputs video data of the previous frame stored in the third memory 135 (or the second memory 133). The memory controller 123 stores/outputs television RGB video data in/from the memories 133 and 135 on a frame basis. ... The memory controller 123 outputs frame video data to the display unit 80 in a frame period (vertical synchronous signal period) and user data stored in the memory 131 to the display unit 80 in an idle period before the start of the next frame, respectively. ...

In the OSD mode, the memory controller 123 accesses user data in the memories 131 and 133 and wall paper data in the memory 135, respectively. At this time, both of the memories 131 and 133 need not be used, and only one thereof may be set and used.”

First, Applicants respectfully point out that “the user data” in Bae refers to data such as a current time, a battery level indicator, a reception sensitivity, etc. The user data also includes data regarding a changed state of the television mode, i.e., when the communication mode is performed in the television mode, the video processing unit 70 outputs television video data, and user data associated with the communication mode from the control unit 10. When the communication mode is performed in the OSD mode, the video processing unit 70 blocks television video data and displays data associated with the communication mode from the control unit 10. The communication mode associated data may be, for example, text message or subscriber information. (See Bae Paragraph [0032]).

Second, Applicants respectfully point out that “the RGB video data” are components of a video signal that outputs red (R), green (G), and blue (B) color signals that can be combined together in various ways to reproduce a broad array of colors. (See Bae Paragraph [0031]).

In other words, neither the user data nor the RGB video data stored in the memories and read out by the controller, as disclosed in Bae, either in the television mode or in the OSD mode, can be considered setting data that sets the luminance of the backlight or the amplification of the speaker unit. To the contrary, it appears that, in Bae, the setting of a display and speaker is unaffected regardless of the mode (television, OSD) of the device. That is, the control unit of Bae would output to a pre-set setting of the display and the amplifier and it would be up to the user to manually change the setting for display and amplification if he/she is not satisfied with the pre-set settings.

In the Final Office Action, the Examiner asserts, in response to Applicants’ arguments, that “Bae states that many setting functions are performed by the video processing unit 70 by reading and writing the command registers as listed on Table 1. For instance, based on the register commands, the brightness, color and contrast of the video signal during the TV mode can be adjusted to the stored values. During the OSD mode or the telephone mode as claimed, the RGB signals can be inverted.” (03/03/2009 Final Office Action, Item 6).

It is submitted that the Examiner misinterprets Table 1 of Bae to contain device driver information specific to mode. The Examiner overlooks the fact that Table 1 of Bae contains *shared variables* accessible by the device taught in Bae, irrespective of mode. Bae does not teach or suggest two modes (e.g., television broadcast viewing mode and telephone mode) where the setting information on the image in *each mode* is read out from memory. Further, as provided above, “the RGB video data” and can not be considered equivalent to setting information that sets, for example, the luminance of the backlight or the amplification of the speaker unit.

Bae allows the access and display of OSD data while in TV Mode, OSD mode, or when the device is operating in both modes. Bae teaches a system wherein “a television video signal and/or an OSD signal can be displayed on a display unit...” (Bae paragraph [0030]). “When the operation mode is the TV mode, the video processing unit 70 utilizes the memory 131 as an OSD memory for

access to user data and the memories 133 and 135 as frame memories for access to TV video data, respectively.” (Bae paragraph [0059]). This operation allows the device to display OSD data while in TV Mode. OSD data can be displayed over wall paper or TV video data. (Bae paragraph [0063]). However, the register tables in Bae only include a single value for brightness and a single value for contrast, regardless of a selected mode.

Embodiments of the present invention are configured to provide two different setting values: one setting value for television mode and another for telephone mode. For example, embodiments of the present invention provide a setting of the driver of the display device 6 and the speaker 7 based on the related information, which is read out from memory. (See paragraph [0031] of the present specification). “The driver performs a setting for brightness (supplied power) of the backlight based on the screen luminance information, etc., for example, and the speaker unit 7 performs an amplification factor setting.” (See paragraph [0031] of the present specification).

Moreover, the Examiner incorrectly correlates the Bae teachings involving the RGBINV register with the device driver settings disclosed in the present application. The Examiner states that “[d]uring the OSD mode or the telephone mode as claimed, the RGB signals can be inverted.” (03/03/2009 Final Office Action, Item 6). However, the RGBINV register contains a *shared value* that tells the device in either the OSD mode, TV Mode, or both whether or not to invert an RGB image. RGBINV is not a setting of a display device that is specific to a particular mode.

By failing to teach or suggest a “controller for reading out, in the television broadcast viewing mode, the *setting information on the image in the television broadcast viewing mode* from the memory so that a setting of a display device is made, and for reading out, in the telephone mode, *the setting information on the image in the telephone mode* from the memory so that a setting of the display device is made,” as recited in claim 1, Bae is incapable of creating different driver settings for each mode, television and telephone, to set the display device’s operation.

Therefore, it is respectfully submitted that independent claim 1 patentably distinguishes over the cited art. Dependent claim 2 inherits the patentability of claim 1 and should be allowed for at least the reasons provided above for independent claim 1.

B. Rejection of Claim 3 Under 35 U.S.C. § 103(a)

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bae in view of Ogoro. Claim 3 depends from independent claims 1 or 2 and inherits the patentability thereof. Ogoro is merely cited as disclosing saving power by turning off the backlight of the LCD after a certain period of time; however Ogoro fails to teach or suggest reading out, in the television broadcast viewing mode, the setting information on the image in the television broadcast viewing mode from the memory so that a setting of a display device is made, and reading out, in the telephone mode, the setting information on the image in the telephone mode from the memory so that a setting of the display device is made.

Thus, Ogora fails to cure the deficiencies of Bae described herein. Applicants therefore assert that claim 3 is allowable for at least the reasons provided above for independent claim 1.

C. Rejection of Claims 4-6 Under 35 U.S.C. § 103(a)

Claims 4-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bae in view of Finke-Anlauff. Applicants respectfully assert that the Examiner erred in applying teachings of Bae and Finke-Anlauff in rejecting claims 4-6, and reconsideration and reversal are requested.

Independent claim 4 recites “a controller for reading out, in the television broadcast viewing mode, the setting information on the sound in the television broadcast viewing mode from the memory so that a setting of a sound output portion is made, and for reading out, in the telephone mode, the setting information on the sound in the telephone mode room the memory so that a setting of the sound output portion is made.”

The Examiner notes that Bae’s disclosure is limited to video data only. Thus, Finke-Anlauff is cited as disclosing a mobile telephone that adaptively changes sound volume in accordance with an environment.

As note above, in Bae, the setting of a display and speaker is unaffected regardless of the mode (television, OSD) of the device. That is, the control unit of Bae would output to a pre-set setting of the display and the amplifier, and it would be up to the user to manually change the setting for display and amplification if he/she is not satisfied with the pre-set settings. According to Bae neither the user data nor the RGB video data stored in the memories and read out by the controller, either in the television mode or in the OSD mode, can be considered equivalent to setting data that sets the luminance of the backlight or the amplification of the speaker unit.

Moreover, Table 1 of Bae contains *shared variables* accessible by the device taught in Bae, irrespective of mode. That is, the register tables in Bae only include a single value for brightness and a single value for contrast, regardless of a selected mode.

Bae does not teach or suggest two modes (e.g., television broadcast viewing mode and telephone mode) where the setting information on the image in *each mode* is read out from memory. Additionally, Bae fails to teach or suggest reading out, in the television broadcast viewing mode, the setting information on the sound in the television broadcast viewing mode from the memory so that a setting of a sound output portion is made, and for reading out, in the telephone mode, the setting information on the sound in the telephone mode from the memory so that a setting of the sound output portion is made, as recited in claim 4.

In contrast, embodiments of the present invention, as recited in claim 4, are configured to provide two different setting values: one setting value for television mode and another for telephone mode. For example, embodiments of the present invention provide a setting of the driver of the speaker 7 based on the related information, which is read out from memory. (See paragraph [0031] of the present specification). As an exemplary advantage of embodiments of the present invention, the mobile telephone device can create different driver settings for each mode, television and telephone, to set the speaker unit's operations.

As a result, it is submitted that independent claim 4 patentably distinguishes over the cited references alone or in combination. Dependent claims 5-6 inherit the patentability of claim 4 and should be allowable for at least the foregoing reasons.

D. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Board is respectfully requested to reverse the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Board and the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 278542008700. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: August 3, 2009

Respectfully submitted,

Electronic Signature: /Michael P. Stanley/
Michael P. Stanley

Registration No.: 58,523
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
(858) 314-7795

VIII. CLAIMS APPENDIX

1. (Original) A mobile telephone device provided with a television broadcast-viewing function, comprising:

a memory for storing setting information on an image in a television broadcast viewing mode and setting information on an image in a telephone mode; and

a controller for reading out, in the television broadcast viewing mode, the setting information on the image in the television broadcast viewing mode from the memory so that a setting of a display device is made, and for reading out, in the telephone mode, the setting information on the image in the telephone mode from the memory so that a setting of the display device is made.

2. (Original) A mobile telephone device according to claim 1, wherein the setting information on the image includes at least one of a screen luminance setting and a contrast setting.

3. (Original) A mobile telephone device according to claim 1 or 2, wherein the setting information on the image in the telephone mode can be set to include low luminance setting information for lowering the screen luminance with passage of a time period, while the setting information on the image in the television broadcast viewing mode can be set not to include the low luminance setting information or to include different low luminance setting information.

4. (Original) A mobile telephone device provided with a television broadcast-viewing function, comprising:

a memory for storing setting information on a sound in a television broadcast viewing mode and setting information on a sound in a telephone mode; and

a controller for reading out, in the television broadcast viewing mode, the setting information on the sound in the television broadcast viewing mode from the memory so that a setting of a sound output portion is made, and for reading out, in the telephone mode, the setting information on the sound in the telephone mode from the memory so that a setting of the sound output portion is made.

5. (Original) A mobile telephone device according to claim 4, wherein the setting information on the sound includes at least a sound volume setting.

6. (Original) A mobile telephone device according to claim 4 or 5, wherein the setting information on the sound in the telephone mode can be set to include setting information for outputting a ringtone at a predetermined sound volume, while the setting information on the sound in the television broadcast viewing mode can be set not to include the setting information for outputting the ringtone, or to include different sound volume information.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.